APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/862,828	05/22/2001	Neil W. Taylor	971-128	8874

7590   07/12/2005

MICHAEL T. SANDERSON, ESQ
KING & SCHICKLI, PLLC
247 NORTH BROADWAY
LEXINGTON, KY 40507

EXAMINER
SON, LINH L D

ART UNIT	PAPER NUMBER
2135	

DATE MAILED: 07/12/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

	Application No.	Applicant(s)
Advisory Action Before the Filing of an Appeal Brief	09/862,828	TAYLOR, NEIL W.
	Examiner	Art Unit	
	Linh LD Son	2135	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED <u>16 June 2005</u> FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

    a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.

    b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

        Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

<u>NOTICE OF APPEAL</u>

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

<u>AMENDMENTS</u>

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will <u>not</u> be entered because

    (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);

    (b) ☐ They raise the issue of new matter (see NOTE below);

    (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or

    (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

        NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5. ☐ Applicant's reply has overcome the following rejection(s): _____.

6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

    The status of the claim(s) is (or will be) as follows:

    Claim(s) allowed: _____.

    Claim(s) objected to: _____.

    Claim(s) rejected: <u>*1-22*</u>.

    Claim(s) withdrawn from consideration: _____.

<u>AFFIDAVIT OR OTHER EVIDENCE</u>

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will <u>not</u> be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will <u>not</u> be entered because the affidavit or other evidence failed to overcome <u>all</u> rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

<u>REQUEST FOR RECONSIDERATION/OTHER</u>

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: <u>See attachement for response to arguement.</u>

12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____

13. ☐ Other: _____.

Response to Arguments

1.   Applicant's arguments filed 06/16/05 have been fully considered but they are not

persuasive.

2.   Regarding to the *footnote* remark on page 7, last paragraph, Applicant argue that

Examiner has made a premature Final rejection. Nonetheless, the applicant admitted that the

claims have amended "just simply narrowed the focus of the previously presented claims

limitations related to subsequent scores" (emphasis added). As written in **MPEP 706.07(a)**,

"*Under present practice, second or any subsequent actions on the merits shall be final, except*

where the examiner introduces a new ground of rejection that is neither necessitated by

applicant's amendment of the claims nor based on the information submitted in the ......", it is

clearly that the final rejection was applied correctly.

3.   Regarding to the remark on page 7 the last paragraph to Page 8 first paragraph and page

9-11, the Applicant argues that "Angelo calculates hash values of programs prior to or before the

program being loaded into memory and executed", and the claim language recites "scores or

calculations of scores associated with executable code at a time when the code is initially or

shortly thereafter loaded into an operating system". Examiner believes that the Applicant

misinterpreted the invention. Angelo's invention must have an operating system to operate the

peripheral devices in Figure 1. In Col 1 lines 25-30, Angelo explains clearly the invention's

purpose, which is "to guarantee the trustworthiness of the installed programs". Thereby, the

value of the program to be executed is compared with its original value (Col 9 lines 13-20). The

original value is the value calculated from the known unaltered state of the program (Col 9 lines
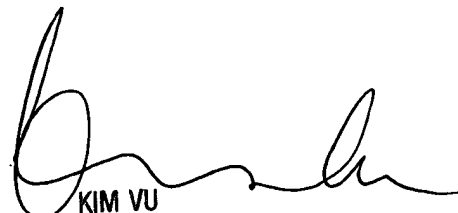
40-45) initially when the program is freshly installed. For one having ordinary skill in the art would realize that the unaltered state of the program should and can only be trusted when it is first loaded in the operating system. Otherwise, the program code will be in tampered state. Therefore, the rejection basis dated 05/19/05 is maintained.

4.   Regarding to the remark on page 9-10, Applicant argues, Angelo touts his technique as having "the additional advantage of being operating system independent". However, it is clearly that the invention Angelo describes does have an operating system to operate the peripheral devices in figure 1 and an integrity check program code by comparing to the score of the original code and the score calculate prior execute (Col 9 lines 13-20).

5.   Regarding to the remark on page 12-14, the Applicant argues that Angelo in combination with Safadi does not render claims 5, 11, 18 and 21 obvious. As rejected in claim 1, Angelo teaches a method of verifying the program code integrity by comparing the score of the original program code calculated and the program code calculated at execution time. However, Angelo does not teach the second score associated with the executable code at a period of time subsequent to when the executable code was initially loaded....". As cited in (Col 8 lines 5-22), Safadi utilizes the expiration time of the object value to initiate the score checking process. It is clearly that the method of integrity checking of the program code periodically can be incorporated with Angelo's invention to check the authorization score (signature, hash) of program code multiple times to maintain the worthiness of the program code prior and during execution (Col 11 lines 1-40). In Col 11 lines 1-40, provides a clear teaching of the program

code score calculation and authorization checking, which is clearly for one having ordinary skill

in the art to realize that it is similar to Angelo's teaching. Therefore, the rejection basis dated

05/19/05 is maintained for claims 5, 11, 18, and 21.

KIM VU
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2100